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Before the  
**Federal Communications Commission**  
Washington, DC

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of

) GC Docket No. 92-52

Reexamination of the Policy Statement  
on Comparative Broadcast Hearings

) RM-7739

) RM-7740

) RM-7741

To: The Commission

**COMMENTS**

KERM, Inc., by its attorney, hereby submits comments in this proceeding with respect to the Commission's proposed modification of the comparative hearing process used for the licensing of new stations. With respect thereto, the following is stated:

Attached hereto are comments of James Kermit Womack, President of Kerm, Inc., in which Kerm, Inc. discusses its experiences with the comparative hearing process, the imperfect ways in which the Commission has applied the "integration" criterion, the extent to which the factor of "minority enhancement" has been abused in the past, and the extent to which the needs and interests of local residents and the merits of providing true "local" service have not been fully examined by the Commission in the past. Ways to improve the comparative hearing process also are discussed in the course of the comments, for which careful consideration respectfully is requested.

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WHEREFORE, it is respectfully requested that the Commission adopt new policies consistent with the comments filed herewith.

Respectfully submitted,

KERM, INC.

By: 

Dan J. Alpert

His Attorney

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*July 22, 1994*

**RE- COMPARATIVE HEARINGS COMMENTS**

**COMMENTS FROM KHEM INC., 212 North 2nd, Rogers, Arkansas, 72756**

KHEM Inc. respectfully maintains that the FCC has allowed an inconsistent and ill conceived array of criteria to cloud and confuse the selection process of Radio station applications in the United States.

The result has amounted to a disservice to the real needs of the American public. For sure, big business has benefited because the organizations which could afford expensive legal representation have prevailed in far too many instances. The public however, has not been best served. Many of the technical ploys used by applicants for new stations have been actually generated by Commission ideas which had little or no merit. Kerm Inc. herein will address several of the primary issues it believes need Commission review. They include:

- (1) Significant criteria which should be considered in determining CP grants.
- (2) The fallacy of using integration as an enhancement credit.
- (3) The problems surrounding minority enhancement credits.
- (4) The possibility of ongoing Commission evaluation of a stations performance.
- (5) The effect of multi station ownership.
- (6) The precise location of broadcast stations to its community of license.

KHEM Inc. believes the FCC is accountable for ascertaining that the "needs and interests" of the public are best served. Without involving itself in how stations program, the Commission should still consider the types of services which are proposed. Only through a review and analysis of these types of services which an applicant proposes, can the Commission have even an inkling of how well the public may be served by an applicant. Where there exists a "history" of service by an applicant, it is quite possible to evaluate his documented service to his community. KHEM Inc. believes that where an applicant fails to provide coverage of his local school board, city council, Quorum Court, and fails to involve himself with his local athletic teams and his community, he really has little to offer. An applicant who has failed to give attention to these basic needs and interests within the community, most likely is "predictable" to continue this type of service in the future. Where any applicant promises such service, in an application he must be held accountable to perform once he is granted a CP. Because the FCC has essentially been non-interested in these basic services, the result has been a move toward becoming a public "juke box" by many radio stations. Those areas of emphasis by the Commission instead have gravitated into areas which have little or no value in insuring the public is served. (1: the continued emphasis of EBS monitoring which has long since become mainly a moot issue as far as its practicality is concerned.

**INTEGRATION AS A CRITERIA...** On the surface, Integration would seem to have merit; but, the Commission lost its ability to apply even the most common sense values to this factor which had become a critical issue, prior to the Court of Appeals ruling. **EXAMPLE-** When KHEM Inc. applied for a Construction Permit for a new Class C2 FM allocated to Balla Vista, Arkansas, it was at most 82% integrated. (Hermit Womack 72% and E. J. Alexander 10%), KHEM Inc's legal council advised that in a comparative hearing its integration percentage would result in a loss to Gayla J. Hendren (100%). Consider these facts: Hermit Womack was a 40 year veteran broadcaster with extensive experience in news, weather, sports broadcasting, Talk show hosting as well as every phase of Advertising sales and programming. E. J. Alexander was a licensed Engineer, whose work had been accepted on numerous occasions by the FCC. These two individuals could not only operate the station, but could actually, personally, install the technical equipment. Without a doubt, Womack and Alexander would be able to do far more personal work for a new station than a young woman who had had no practical experience, yet according to FCC integration policies in place at the time, she was the superior applicant. KHEM Inc., thus withdrew in the face of such odds. KHEM Inc. believes integration had to be dropped as a criteria, because it was not being applied by the Commission in a meaningful manner. KHEM Inc. agrees with the Court of Appeals ruling.

**MINORITY ENHANCEMENT...** Likewise, minority enhancement would appear to have merit; but, it too is currently being applied without common sense values. **EXAMPLE-** KHEM Inc. is currently an applicant for a new FM station at Bentonville, Arkansas. Two of the competing applicants are claiming enhancement credit because they are a fraction Indian. One applicant is a male who already owns a Class C Radio Station being operate out of Bentonville, (licensed to Seligman, MO), as well as a daytime on 1190 KHz. Clearly no indication has ever existed that this individual has ever been handicapped because he is a fraction Indian. His minority status has not hindered his acquisition of two existing properties in the community. In fact his daytime operation on 1190 KHz, was built 18 months before KHEM was built, which means he could have obtained the frequency now occupied by KHEM Inc. (790 KHZ) had he done a proper frequency search. Indeed his facilities of 1190 KHz could have been improved to include nighttime, had he been willing to spend the money necessary to install a directional antenna system, as did KHEM. The Commission however, through its policies such as "day timer preference" credits for such individuals, have actually rewarded such lack of effort to improve facilities. Why should aggressive stations, such as KHEM, be penalized simply because they were willing to improve their service to the community by improving their facilities?

Another applicant, Cherokee Broadcasting, also claims enhancement

in the Bentonville case; because they are part Indian. Yet these two individuals are the son and daughter of Dewey Johnson, current owner of KMMO FM (Class C3) and KMMO FM (now operating 24 hours per day on 1390 KHz in adjacent Rogers, Arkansas). This individual also currently owns KCCX FM at Russellville, and KMMK FM and KCMH FM at Bentonville, an adjacent community, and operates all three from the same location at Russellville, Arkansas. Clearly, no minority enhancement to secure another property is in the public interest.

KMMK Inc. believes the following regulations should be installed before minority enhancement credit would be given:

(A) The applicant would have to have applied in an area in which at least 10% of the population in his proposed coverage area would be of the same minority status. KMMK Inc. believes it is morally and economically justified to encourage minority ownership in areas where at least 10% of the population to be served are of the same minority status.

(B) The applicant, to be granted minority enhancement credit, must be applying for his first station or must not currently own controlling ownership of another station.

KMMK Inc. believes that the Commission has also erred in recent years by allowing multi station operations from the same facility. The movement of many small town stations to larger nearby communities has essentially robbed those communities of intended services. (Services which had been promised by the applicants in order to receive the CP for the station).

KMMK Inc. believes that the licensing of a station to a community should carry an obligation to serve that community. In real life however, it has been a "ploy" used by applicants to obtain a station.

In summary, KMMK Inc. contends that the overriding factor in granting a new CP to competing applicants should be an evaluation of which applicant can best serve the needs and interests of the proposed coverage area.

Hearings should be held in that community, and should be publicized to allow for the testimony of community leaders. It might well be advisable for the FCC to assign an investigator to make a fact finding review in that community to obtain a clearer picture of local circumstances.

The end result would most certainly be a better informed Administrative Law Judge, and consequently a smarter choice of an applicant. It would also better insure that the needs and interests of the public would be served.